REMARKS

In the Official Action mailed 8 December 2004, the Examiner reviewed claims 1-75. The Examiner objected to claims 25 and 71 for informalities; rejected claims 1, 3-26 and 28-38 under 35 U.S.C. §102(e); rejected claims 2 and 27 under 35 U.S.C. §103(a); rejected claims 39 and 41-61 under 35 U.S.C. §103(a); and rejected claim 40 under 35 U.S.C. §103(a). The Examiner has indicated that claims 66-70 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 71-75 are allowed.

Applicant has amended claims 1, 3, 5, 6, 7, 9, 25, 26, 28, 30, 33, 39, 63, 66, 70 and 71. Claims 1-75 remain pending.

The objection and rejections are respectfully traversed below.

Objection to Claims for Informalities

Claim 25 is objected to because there is no period at the end of the claim. Claim 25 has been amended as suggested by the Examiner.

Claim 71 has been objected to because the word "an" before "end station" second occurrence should be deleted. Claim 71 has been amended as suggested by the Examiner.

Applicants have also amended claim 3, 28, 30, 33, 63 and 70 to correct typographical errors discovered in review of the claims. These amendments do not add new material and do not materially alter the claims.

Rejection of Claims 1, 3-26 and 28-38 under 35 U.S.C. §102(e)

Claims 1, 3-26 and 28-38 are rejected under 35 U.S.C. §102(e) as being anticipated by Rho (U.S. Patent No. 6,428,485).

Applicant has amended independent claim 1, adding subject matter similar to that of original claim 5 and original claim 9.

Rho fails to include a structure that corresponds to "a component to deliver a second portion of the computer program to the end station...," and fails to include "logic executed at the end station that selects stimuli in response to user input and presents the selected stimuli to a user at the end station...," which is included on the portion of the computer program that is delivered by the first portion of the computer program. Rho does not discuss distribution of first and second portions of computer program resources between a server and an end station. Rather,

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Rho describes an operation which is controlled completely at the server, and relies on a browser executed by the end station or other unnamed resources at a "hearing ability test site" (Rho, column 3, line 1). There is no description in Rho of the implantation of the computer program that controls the hearing test. The Examiner appears to take a position that such a computer program, as obviously relied upon by Rho, would inherently include the first portion and the second portion as recited in the claims in the present application. The applicant respectfully disagrees, and requests reconsideration.

With respect to the added limitation in claim 1, that is similar to original claim 5, the Examiner argued as to claim 5 that Rho "inherently" includes the "logic that presents a set of stimuli to a user at the end station and accepts input from the user response to the stimuli." It is unclear to Applicant what inherent process in the end station the Examiner believes corresponds with the "logic" recited in claim 5. Obviously, an end station would include resources for producing stimuli, and for accepting input. However, it is not inherent that the end station would include such logic, which is a portion of the computer program executed in accordance with the hearing test protocol, as required in claim 1 as amended.

Applicant has amended original claim 5, so that it now depends from claim 6.

Claim 6 has been amended so that it is now set out in independent form. With regard to claim 6, the Examiner took the position that "one would inherently include logic... controlling a sensor at the end station to sense environmental data...." Applicant respectfully disagrees. Rho does not mention sensing environmental data at any point in its specification, and therefore does not inherently provide for sensing such data. The Examiner cites columns of 3 and 4 of Rho in support of the conclusion that such logic would be inherent. The only data described in Rho relates to personal information about the user, and information about responses to stimuli. There is no in discussion in Rho whatsoever of environmental data, or about sensing information about environmental data as a part of the hearing test, as required by the claims. On the contrary, Rho apparently operates with the assumption that the test is being executed at a "hearing ability test site" (Rho, column 3, line 1), where environmental factors would be precisely controlled, rather than sensed by the computer program.

Applicant has amended original claim 7 as well, so that it is recited in independent form. With regard to claim 7, the Examiner took the position that "one would inherently include logic... controlling a sensor at the end station to sense a set up...." Applicant respectfully disagrees. Rho does not mention sensing a setup of the end station at any point in its specification, and

therefore does not inherently provide logic for sensing such information. On the contrary, as mentioned above, Rho apparently operates with the assumption that the test is being executed at a "hearing ability test site" (Rho, column 3, line 1), where the set up of the end station would be known in advance, rather than sensed by the computer program.

Applicant has amended original claim 9, so that it depends from claim 6 as amended.

Claims 3, 4, 8, 10-25 depend from claims 1, 6, or 7, as amended, and are allowable for the same reasons. Furthermore, such claims recite unique combinations not shown by Rho.

For example, as to claims 3, 23-25, 28 and 36-38, the Examiner takes the position that Rho inherently discloses the use of a home computer, the handheld computing platform or an Internet enabled mobile phone. Applicant respectfully disagrees. As mentioned above, Rho apparently operates with the assumption that the test is being executed at a "hearing ability test site" (Rho, column 3, line 1).

Furthermore, with respect to claims 15-22, Examiner takes the position that Rho discloses the specific hearing tests recited. The Examiner is clearly mistaken. The hearing tests recited are described in the specification at pages 9 and 10 of the present application. Upon review, the Examiner will see that Rho does not describe any of these specific hearing tests. Furthermore, the test described by Rho is apparently simplified for the purposes of the Internet application. Rho therefore does not suggest that the hearing test recited in claims 15-22 could be executed in the claimed environment.

Applicant has amended claim 26 to provide a description of the "test sound signal resources" that are allocated to the end station, and to clarify the "allocating" steps, as using the communication channel. Rho does not describe any process corresponding to the allocation of such resources to the end station. Rather, Rho relies on logic executed by the server for the purposes of selecting and presenting stimuli at the end station. There is no step of allocating processing resources between the server and the end station in Rho, using the communication network as recited in the amended claim.

Claims 28-38 depend from claim 26 as amended, and are allowable for at least the same reasons, and because of the unique combinations provided in such claims.

Accordingly, reconsideration of the rejection of claims 1, 3-26 and 28-38 as amended is respectfully requested.

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<u>Rejection of Claims 2 and 27 under 35 U.S.C. §103(a)</u>

Claims 2 and 27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rho (U.S. 6,428,485) in view of Scott et al. (U.S. Patent No. 6,760,324).

Claim 2 depends from claim 1, as amended, and claim 27 depends from claim 26 as amended; and such claims are therefore patentable for at least the same reasons.

Accordingly, reconsideration of the rejection of claims 2 and 27 as amended is respectfully requested.

<u>Rejection of Claims 39 and 41-65 under 35 U.S.C. §103(a)</u>

Claims 39 and 41-65 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rho (U.S. 6,428,485) in view of Hou (U.S. Patent 6,322,521).

Applicant has amended claim 39 to clarify that the logic used for calibration is part of the portion of the computer program that is delivered to the end station. As mentioned above, Rho does not contemplate downloading a portion of a computer program to the end station as required in the claim as amended. Furthermore, Rho does not mention calibration. The Examiner relies on Hou to suggest the calibration process. Although Hou describes a calibration process, it does not describe the subject matter of claim 39 as amended, in which the calibration process is executed by software delivered to the end station under the control of a first portion of the computer program executed at the server.

Claims 41-65 depend from claim 39, and are patentable for at least the same reasons, and because of the unique combinations recited.

Accordingly, reconsideration of the rejection of claims 39 and 41-61 as amended is respectfully requested.

<u>Rejection of Claim 40 under 35 U.S.C. §103(a)</u>

Claim 40 is rejected under 35 U.S.C. §103(a) as being unpatentable over Rho (U.S. 6,428,485) in view of Hou (U.S. Patent 6,322,521) and further in view of Scott et al. (U.S. Patent No. 6,760,324).

Claim 40 depends from claim 39, as amended, and is patentable for at least the same reasons, and because of the unique combination recited.

Accordingly, reconsideration of the rejection of claim 40 as amended is respectfully requested.

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Allowable Subject Matter

Claims 66-70 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended claimed 66 to incorporate the subject matter of its basic claim 39. Claims and 67-70 depend from claim 66 as amended. Applicant therefore requests reconsideration of the objection to such claims in view of the amendment.

Claims 71-75 are allowed. Claim 71 has been amended to correct a typographical error. Otherwise, no amendments to such claims are presented.

CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is requested.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1003-1).

Respectfully submitted,

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